

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANGEL SULLIVAN-BLAKE and HORACE
CLAIBORNE, on behalf of themselves and
all others similarly situated,

Plaintiffs,

Civil Action

vs.

No. 18-1698

FEDEX GROUND PACKAGE SYSTEM, INC.

Defendant.

Transcript of TELEPHONE CONFERENCE proceedings recorded
on February 10, 2022, in the United States District Court,
Pittsburgh, Pennsylvania, before The Hon. Robert J. Colville,
United States District Judge

APPEARANCES:

For the Plaintiffs: Shannon Liss-Riordan, Esq.
Zachary L. Rubin, Esq.
Michelle Tolodziecki, Esq.
Harold Lichten, Esq.

For the Defendant: Jessica Goneau Scott, Esq.
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produced by computer-aided transcription

1 system to get you more responses and faster responses.

2 Obviously, that's not the case. So I think at this
3 point the burden needs to shift to Plaintiffs to come up with
4 some sort of workable plan as to how long this is going to
5 take, what they propose to actually do it; and the response
6 that Ms. Liss-Riordan gave last time, which was, well, you're
7 just never going to get that many, you know. We'll do our
8 best to get you to 500, but otherwise, that's all we can
9 promise.

10 That's not the answer, and that's not what the
11 Court ordered. So, Your Honor --

12 THE COURT: Ms. Liss-Riordan, I'm assuming that's
13 you chiming in. If you want to respond to that, you're
14 welcome.

15 MS. LISS-RIORDAN: Yes. Thank you, Your Honor. I
16 think the conversation we had before, and our response is the
17 same as it has been all along, is we are doing our best to
18 get as many as we can. My reading of Your Honor's Orders
19 were that you ordered discovery on this large number, I think
20 recognizing we weren't going to get all of them, but that we
21 would get to a point where there would be a big enough
22 sampling so that FedEx could make whatever arguments it wants
23 to make, including the argument it's going to make that the
24 results are skewed.

25 I mean the truth of it is is that when you have

1 these cases, yes, a lot of people don't want to participate.
2 It's hard to get them to participate. It doesn't mean they
3 don't have a claim. It means that they have lives that
4 they're focused on, and it's just hard to get them to focus
5 on something else, but we are doing our best.

6 My records show that out of the initial 500, we
7 have produced to FedEx questionnaires and discovery responses
8 for 263 of them. So more than a 50 percent response rate,
9 which we actually think is pretty good for this size of a
10 process we've been tackling.

11 Apparently FedEx is not satisfied that these are
12 all complete, and that's why Ms. Scott gave a lower number,
13 but we see that we've gotten more than 50 percent in and are
14 well on our way with the 1,150 we've been in contact with and
15 are working on responses for, let me see, another 260
16 approximately, but we're continuing to reach out and work on
17 them.

18 So we do still think the schedule that we've spoken
19 about before makes sense. In June is what we're planning.
20 We think by June we'll be able to get what we can get, and we
21 should move on from there.

22 If FedEx wants to give us more people to reach out
23 to, we can do that. I mean one suggestion that I have just
24 listening to what Ms. Scott just said is she's been saying
25 that it's just very burdensome for them to send out these

1 requests because they have to dig up all this information on
2 people in order to do it.

3 I mean it might be a little easier then if they
4 just send us lists of names, and we can reach out and try to
5 make contact with these folks, and we can let them know the
6 folks who we think are being responsive and we expect we can
7 fill these out for before they go through all the trouble of
8 pulling all the information. That's just one possibility
9 that might make it easier for them based on what she's
10 saying.

11 But anyway, I think, you know, by the end -- we're
12 well on our way to having well more than 500. I expect by
13 June we should hopefully have well more than that.

14 Like I said, we think that this should be a two-way
15 street here, and FedEx should be also producing information
16 that we have requested for these people who are responding to
17 discovery as well as the additional thousands who we've
18 asked -- who we've put forward as our potential witness pool
19 that FedEx is providing -- or has been ordered to provide the
20 gross vehicle weight information for.

21 So, yeah, if we were going to wait to get absolute
22 complete responses from 1,650 people, yes, I think that will
23 take years. And I don't think perfection is ever sought or
24 obtainable in this kind of situation. I think what the Court
25 needs is a broad enough record of evidence to make the

1 plan to do that. I think that's going to be required. Now,
2 how many and how you go about selecting that, again, I'm
3 going to defer to your collective judgment until and unless
4 you can reach an agreement, but I think that's almost
5 certainly going to happen. Again, I'll entertain argument if
6 need be.

7 But here's the thing. Whether we go past June or
8 not and whether it's 1,650 or something close to it or
9 something not so close to it, am I wrong about something
10 that's sort of fundamental? At the end of the day, whatever
11 the number is, the fair number of Plaintiffs from whom we
12 should get adequate written discovery, and let me also point
13 out, again, there's a difference between complete responses
14 and partial responses, and again, we're going to have to look
15 at whether the partial responses are adequate enough in some
16 measure or not to, number one, survive a motion to dismiss,
17 and, number two, be treated as an adequate response at least
18 as to the question of whether we have 1,650 responses or not
19 or whatever appropriate number.

20 That's a judgment we'll have to make as well. But
21 at the end of the day both parties need to, maybe not want
22 to, but you need to get to the certification or
23 decertification stage here.

24 I assume neither of you want to spend the next ten
25 years doing it. And I'm assuming -- I can assure you that's

1 not going to happen. But you're going to spend more than the
2 next six months doing it I think, unless you can reach some
3 agreement.

4 Now, if you're able to reach an agreement, then
5 look, 1,650 isn't necessary, but a thousand might do it, or
6 750 might do it, or 1,250 might do it, and here's how we're
7 going to proceed, and this is the schedule that we think we
8 can get it done. And maybe it's not June, but it's January,
9 or maybe it's next May. And again, I don't like the idea of
10 thinking about next May, but I'm not sure what to tell you.
11 This is going to take time.

12 But the bottom line is -- again, I don't see either
13 of you seeing a way out of this case before we get to a
14 certification or decertification.

15 And Ms. Liss-Riordan, if, at the end of this first
16 round, we have a 50 percent return rate and, of those, a
17 third of those are only partial returns, I can -- I'll
18 entertain your argument, but I'm pretty sure we're going to
19 have another round of discovery. And I imagine you
20 understand why.

21 That said, Ms. Scott, again, pick your poison. You
22 don't want to go to the effort and time to issue these
23 written discovery requests, but okay, then maybe you don't
24 need 1,650. How many do you need? And what bottom line do
25 you need to get your decertification motion in a position

1 we know what we get by June.

2 Again, I'm not -- if things continue as they've
3 been pressing now, I think it's obvious you're not going to
4 get even halfway there, at least arguably. We'll maybe have
5 to have a discussion about the partial responses.

6 But I'm not sure what to tell you other than I
7 think you can expect that we may need to do additional rounds
8 unless you can reach an agreement that, hey, it is what it
9 is. And there's enough here to sort of show what you think
10 is obvious and needs to be shown. You can make the arguments
11 that you need to make regarding certification.

12 Beyond that, I think we have a number of small
13 motions, and I don't want to tackle -- Ms. Liss-Riordan, I
14 appreciate your interest in addressing other issues, and if
15 you want to mention them, just put them on the radar, I'm
16 okay with that. But I'm not going to be ruling on anything I
17 can assure you. But I don't want to engage in a deep dive
18 into anything if there's any disagreement regarding whether
19 it's been fully conferred upon or conferred regarding
20 previously.

21 MS. LISS-RIORDAN: Your Honor, I really apologize,
22 but I have another meeting. I'm really hoping that we can
23 wrap this up. But I just did want to seek clarification on
24 the discovery issues. We have -- I think you had asked us
25 before to notify you informally so that we could have an